

IN THE UNITED STATES DISTRICT COURT FOR THE  
EASTERN DISTRICT OF OKLAHOMA

**FILED**

OCT 30 2007

William B. Guthrie  
Clerk, U.S. District Court

By \_\_\_\_\_

Deputy Clerk

DANIEL JOE PRICE,

Plaintiff,

v.

JOHN PHILPOT, et al.,

Defendants.

No. CIV 02-451-RAW-SPS

**OPINION AND ORDER**

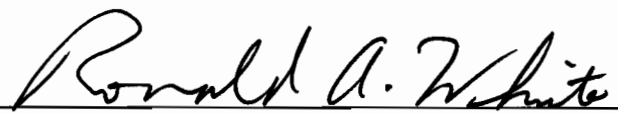
This action is before the court on Defendant Cody Hyde's motion for summary judgment [Docket #112]. In its partial remand, the Tenth Circuit Court of Appeals found that plaintiff could proceed with his excessive force claim against Defendant Hyde with respect to plaintiff's arrest on September 14, 2000. *Price v. Philpot*, 420 F.3d 1158, 1161, 1163 (10th Cir. 2005). According to discovery material, however, Hyde did not participate in plaintiff's arrest, because he was positioned in a ditch approximately 1.5 miles from the scene of the arrest. [Docket #112, Ex. 1 at 5]. Hyde did not see or have any contact with plaintiff on the date of plaintiff's arrest, so Hyde could not have used excessive force against plaintiff. *Id.* After plaintiff was arrested, Hyde was advised by other officers that the arrest was complete and that Hyde could leave his post. *Id.*

Plaintiff states in his response to the motion for summary judgment that he assumed Defendant Hyde was the patrolman who used excessive force against him, because Hyde had a vendetta against plaintiff. [Docket #117 at 2]. Plaintiff admits that Defendant Hyde should be dismissed from this case, because he was not the patrolman who allegedly beat him. *Id.*

“Personal participation is an essential allegation in a § 1983 claim.” *Bennett v. Passic*, 545 F.2d 1260, 1262-63 (10th Cir. 1976) (citations omitted). *See also Mee v. Ortega*, 967 F.2d 423, 430 (10th Cir. 1992). Here, the court finds plaintiff has admitted there is a no genuine issue for trial with respect to Defendant Hyde. *See* Fed. R. Civ. P. 56(e).

**ACCORDINGLY**, Defendant Cody Hyde’s motion for summary judgment [Docket #112] is GRANTED, and Defendant Hyde is dismissed from this action.

**IT IS SO ORDERED** this 30 day of October 2007.

  
**RONALD A. WHITE**  
**UNITED STATES DISTRICT JUDGE**